
Appeal Decision

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 18th May 2026

Appeal Ref: APP/Q1445/X/24/3353329

4 Steine Gardens, Brighton BN2 1WB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Jesse Morris against the decision of Brighton & Hove City Council.
 - The application ref BH2022/03832, dated 6 December 2022, was refused by a notice dated 15 July 2024.
 - The application was made under section 191(1)(a) of the 1990 Act.
 - The existing use for which a certificate of lawful use or development is sought is as a dwellinghouse (C3) incorporating use as a holiday let.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Given the nature of the dispute in this case, I did not consider a site visit to be necessary. Accordingly, I have made my decision based on the submitted information and plans but without visiting the site. The description of the use and the application date, in the banner heading above, are taken from the application form.
3. My decision rests on the facts of the case, on relevant planning law and judicial authority. The appellant's evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

5. In order for an LDC to be granted under section 191 of the 1990 Act, the burden of proof is with the appellant, and the appropriate test of the evidence is the balance of probabilities. The onus is firmly on the appellant to show that the use as a dwellinghouse (C3) incorporating use as a holiday let was lawful at the time the LDC application was made.
6. Section 191(2) of the 1990 Act states that *'For the purposes of this Act uses and operations are lawful at any time if— (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for*

any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.’ In this case there is no evidence before me to indicate that there were any requirements of an enforcement notice in force at the date of the LDC application.

7. The meaning of “development” as defined at section 55(1) of the 1990 Act includes the making of any material change in the use of any buildings or other land. Therefore, this case turns on whether the existing use constituted a material change of use from the pre-existing use of the building. For a material change of use to have occurred, there must be some definable change in the character of the use from what has gone on previously.
8. The Town and Country Planning (Use Classes) Order 1987, as amended (UCO), sets out how dwellinghouses are defined for the purposes of the Order in Class C3. These are:

Use as a dwellinghouse (whether or not as a sole or main residence) by

 - (a) a single person or by people to be regarded as forming a single household;
 - (b) not more than six residents living together as a single household where care is provided for residents; or
 - (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).
9. It was held in Moore¹ that the use of a dwellinghouse for commercial holiday lettings will not always amount to a material change of use, nor is it the case that such a use can never amount to a material change of use. To establish whether a material change of use has occurred a comparison between the actual existing use and the previous use needs to be made, as opposed to considering a hypothetical range of activities.
10. The appeal property is a 5 bed, two storey with rooms in the roof and basement, terraced property. The appellant’s evidence indicates that between 2004 and 2017 the property was in use as a House in Multiple Occupation (HMO) falling within Class C4 of the UCO. Furthermore, it states that since then the property has been used by the appellant and their family as a second home. That evidence also states that the appellant resides at the property most weeks when working nearby and immediate family members particularly the appellant’s wife also regularly stay at the house during the week. It goes on to state that the property has been used by the appellant and their immediate family members regularly for long weekend and extended visits to Brighton. Moreover, it is indicated that between November 2021 and November 2022 the property was occupied as a holiday let for approximately 130 nights with visitors generally staying for 2 nights over weekends.
11. However, from the evidence available, I am unable to identify when the holiday let use began. It is not clear if the property was used as a second home only, after the use as a HMO ceased, or whether the holiday let use and the second home use began at the same time. Moreover, I have been provided with little specific detail regarding the characteristics of the current use. The appellant’s evidence

¹ *Moore v Secretary of State for Communities and Local Government* [2012] EWCA Civ 2101

states that “*Whilst 4 Steine Gardens can accommodate 10 persons (in five bedrooms) it is not usually occupied to this maximum when rented to visitors. The average occupancy is 7 – 8 guests. Visitors are usually family groups or friends re-uniting for a singular purpose. The applicant does not rent the house to single sex party groups nor leisure (ie yoga or cycling) clubs. A significant number of visitors are for work or conference purposes and are colleagues. All visitors are part of pre-formed or related groups that stay at the property for a singular purpose as single households.*”

12. Nonetheless, there is no booking evidence provided to support that statement. In addition, the evidence is contradictory as it indicates that most bookings are over a weekend but that a significant number of visitors are for work or conference purposes. There is also no detail on how the property is managed and cleaned with regard to changeovers. There is also no detail on how often or how many of the appellant’s immediate family members use the property for extended visits to Brighton.
13. I acknowledge that the appellant considers that the use is unlikely to cause harm to the amenity of residential neighbours. However, the Council has stated that the LDC application was submitted in response to a complaint to it and that there are also other indications on Council systems that there has been cause for concern in terms of noise and disturbance when the property has been let for short term accommodation purposes.
14. Thus, from the evidence before me, I cannot identify the characteristics of the existing use with any precision. I am also mindful that, in the absence of any substantive evidence relating to who has occupied this property, I cannot conclude that it has been occupied by people or groups living together as single households, in accordance with Class C3 of the UCO.
15. For the reasons set out above, I find the appellant’s evidence is not sufficiently precise and unambiguous to show, on the balance of probability, that the existing use of the property as a dwellinghouse (C3) incorporating use as a holiday let did not constitute development.

Conclusion

16. For the reasons given above, I conclude that the Council’s refusal to grant a certificate of lawful use or development for as a dwellinghouse (C3) incorporating use as a holiday let is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

D Boffin

INSPECTOR